

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

MALON BARRETT,

Plaintiff,

v.

No. CV 10-757 MV/GBW

RAY TERRY, Warden, Otero  
County Processing Center,

Defendants.

ORDER TO SHOW CAUSE

This matter is before the Court *sua sponte*. On October 3, 2010, Defendant Terry filed a Motion for Summary Judgment.<sup>1</sup> *Doc. 9*. Per our Local Rules, Plaintiff had 14 days to respond to Defendant's motion. D.N.M.LR-Civ 7.4(a). Plaintiff, however, has still not filed his response to the Motion for Summary Judgment. Under our Local Rules "[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ 7.1(b). Moreover, Plaintiff's failure to prosecute indicates a lack of interest in litigating his claims. *See*

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<sup>1</sup> The Court notes that the filing of a Motion for Summary Judgment prior to answering a complaint is within the bounds of proper procedure. *See Marquez v. Cable One, Inc.*, 463 F.3d 1118, 1120 (10th Cir. 2006). Because the motion was properly filed, Plaintiff had a duty to respond within the deadline set out by D.N.M.LR-Civ 7.4 and FED. R. CIV. P. 6(a).

*Martinez v. Internal Revenue Service*, 744 F.2d 71, 73 (10th Cir. 1984); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962). The Court will require Plaintiff to show cause why his complaint should not be dismissed.

IT IS THEREFORE ORDERED that, within twenty-one (21) days from entry of this order, Plaintiff shall file a response showing cause, if any, why his complaint should not be dismissed. Failure to respond to this order to show cause will constitute an independent basis for dismissal.

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UNITED STATES MAGISTRATE JUDGE